

**MINUTES  
of the  
FIRST MEETING  
of the  
HOUSE SPECIAL INVESTIGATORY COMMITTEE**

**September 28, 2015  
Room 307, State Capitol  
Santa Fe**

The first meeting of the House Special Investigatory Committee (HSIC) was called to order by Representative Zachary J. Cook, co-chair, on September 28, 2015 at 9:35 a.m. in Room 307 of the State Capitol in Santa Fe.

**Present**

Rep. Gail Chasey, Co-Chair  
Rep. Zachary J. Cook, Co-Chair  
Rep. Jim Dines  
Rep. Kelly K. Fajardo  
Rep. Sarah Maestas Barnes  
Rep. Javier Martinez  
Rep. William "Bill" R. Rehm  
Rep. Patricio Ruiloba  
Rep. Tomás E. Salazar  
Rep. Jeff Steinborn

**Absent**

**Staff**

Raúl E. Burciaga, Director, Legislative Council Service (LCS)  
John Yaeger, Assistant Director for Legislative Affairs, LCS  
Amy Chavez-Romero, Assistant Director for Drafting Services, LCS  
Douglas Carver, Staff Attorney, LCS  
Nancy I. Martinez, Intern, LCS  
Andrew M. Vallejos, Minority Analyst

*These minutes are not a verbatim record of the meeting.*

**Monday, September 28**

Co-Chair Cook opened the meeting with a statement that noted the solemnity of the task being undertaken and the importance that the process be free from the influence of politics. He noted that the power to impeach is vested by the Constitution of New Mexico with the New Mexico House of Representatives and that the consequences are stark: the impeached official may not exercise any powers or duties of office unless subsequently acquitted by the New Mexico Senate. It is imperative, he concluded, that the House impeach an official only when the

failure to do so carries even graver consequences. Co-Chair Chasey made a statement noting that the impeachment process is not a judicial process and that the criminal case being prosecuted against the Secretary of State and the House proceedings have no bearing on each other. The duty of the committee, she stated, is to proceed in the best interests of the people of the state. The committee is committed to fairness, justice and transparency, she continued, and would adopt rules of procedure that embody those principles.

Co-Chair Chasey then asked members of the committee and the LCS staff members assisting the committee to introduce themselves. She also introduced the analyst for the minority, and she noted that the majority would also be retaining an analyst.

Members of the committee echoed the sentiments expressed by the co-chairs.

Co-Chair Cook recited the charge given to the HSIC by the Speaker of the House: "to investigate and recommend to the House of Representatives whether the House should consider impeachment of the secretary of state for alleged crimes, misdemeanors or malfeasance in office". He noted that the committee has the experience of the investigations in 2005 and 2011 for guidance. He then asked Mr. Burciaga to brief the committee on the impeachment process and how the House had proceeded in the past.

Mr. Burciaga discussed that in both 2005 and 2011, the House was in special session for matters not related to impeachment when subcommittees of the House Rules and Order of Business Committee were formed to investigate the possible impeachment of a state official. In 2005, the investigation concerned the State Treasurer, Robert Vigil; in 2011, the investigation concerned the Public Regulation Commissioner from District 3, Jerome Block, Jr. As the House is not in session at this time, the Speaker exercised his authority to create the HSIC, which, as in 2005 and 2011, is evenly divided between the majority and minority and is co-chaired by a member of each party. He noted that shortly after the appointment of members to the committee, the New Mexico Legislative Council, on September 15, authorized the committee to hire special counsel to assist the committee in its investigation. He reiterated the committee's charge, noted that impeachment is the sole responsibility of the House and analogized the impeachment process to that of a case presented to a grand jury for indictment. An impeachment, like an indictment, is a formal charge of wrongdoing that must be proven in another venue, in this case, a trial before the Senate.

He further noted that in the two previous impeachment investigations, the proceedings in the House proceeded concurrently with the respective criminal cases against the public officials being investigated. In 2005, the subcommittee held several meetings in one month's time, considering the evidence gathered by special counsel and beginning deliberations on Articles of Impeachment before being informed that the State Treasurer had resigned from office. In 2011, the subcommittee met six times over the course of two months and concluded its work upon the resignation of the Public Regulation Commissioner. It is impossible to predict, Mr. Burciaga stated, how much time might be required for the present investigation.

Mr. Burciaga stated that the Secretary of State will be facing various charges at a preliminary hearing in the First Judicial District that has been set to begin on October 30. At the preliminary hearing, a judge will determine whether there is sufficient evidence to bind the Secretary over for trial. He noted that a motion has been filed to postpone the October 30 hearing. Mr. Burciaga reiterated that impeachment proceedings have no bearing on any civil or criminal case that might be pending, and judicial proceedings have no bearing on impeachment proceedings. He repeated to the committee the consequences of impeachment and added that the consequence of conviction by the Senate is removal from office and disqualification to hold any office or to vote.

Mr. Burciaga then discussed that the subcommittee in 2005 spent a great deal of time considering and developing rules of procedure and that the 2011 subcommittee benefited greatly from that work, modifying the rules only somewhat for its proceedings. He also noted that in 2005 and 2011, the subcommittees hired special counsel to assist the committee and that special counsel worked closely with and under the direction of the subcommittees, and especially, of the co-chairs. In both cases, the subcommittee authorized the co-chairs to select the special counsel, and those selections were made quickly.

Co-Chair Chasey requested that Mr. Carver brief the committee on the rules and procedures used in the 2011 impeachment investigation. She recommended that the committee discuss the rules with the special counsel before adopting any of those rules for the present investigation.

Mr. Carver began by giving the committee an overview of the contents of the binders assembled for them by the LCS, and he noted that the materials would be available on the legislature's web site. He then turned to the rules and read to the committee a set of rules that mirror those used when Commissioner Block was investigated, noting that the only changes that had been made were ones to reflect the nature of the current investigation; for example, "Public Regulation Commissioner" was replaced with "Secretary of State". He also noted that the 2011 subcommittee had been a subcommittee of a standing committee of the New Mexico House of Representatives, unlike the present committee, and therefore the subcommittee in the prior investigation had to report through the House Rules and Order of Business Committee to the floor of the House. The rules before the committee had been changed to reflect that the HSIC would report directly to the House.

The draft rules read to the committee are as follows:

## DISCUSSION DRAFT

### Rules and Procedures for the House Special Investigatory Committee

1. The House Special Investigatory Committee (HSIC) shall give public notice of the date, time and place of its meetings as soon as practicable before the commencement of its meetings.

2. At the request of special counsel or a majority of the HSIC, the HSIC shall conduct appropriate proceedings in executive session. Staff members must sign confidentiality statements.
3. The task of gathering and presenting evidence to the HSIC shall be the responsibility of special counsel. In that regard:
  - a. all documentary evidence from public records, including affidavits of investigative authorities, shall be presented in open, public sessions;
  - b. as other evidence is gathered, and at the request of special counsel, the HSIC shall decide how that evidence is to be presented — i.e., through live witnesses, depositions or otherwise;
  - c. also at the request of special counsel, the HSIC will decide whether that evidence is to be presented in public sessions or whether respect for ongoing civil, criminal or administrative proceedings or questions of privilege requires that such evidence be presented in executive session;
  - d. testimony by witnesses, whether presented in public session or otherwise, shall be under oath, through direct questioning by special counsel. Members of the HSIC shall, however, retain the right to question any witness presented. Members of the HSIC may submit questions to the special counsel regarding testimony by deposition;
  - e. these proceedings are investigative and charging in nature and thus do not require an adversarial hearing. Nonetheless, the Secretary of State shall be apprised of the evidence submitted by special counsel, and the Secretary's response to that information shall be invited by way of:
    - (1) the Secretary's own testimony, under oath, provided through the questioning of special counsel; and
    - (2) through other means, under terms and conditions deemed appropriate by the HSIC, upon the recommendation of special counsel; and
  - f. special counsel is authorized to request the issuance of subpoenas on behalf of the HSIC.
4. After the presentation of the evidence, the HSIC, sitting in executive session, shall receive and consider the advice of special counsel with respect to any potential articles of impeachment.
5. The question presented to the HSIC and the House is, "Is there credible evidence to warrant impeachment?". The HSIC and the House will apply the following standard of proof:

There is credible evidence to warrant impeachment.
6. The HSIC shall make a report to the full House. If the report recommends articles of impeachment, the HSIC shall present the articles of impeachment to the whole House.
7. If and when articles of impeachment are presented to the House, all House members shall be given access to all the evidence considered by the HSIC.

After reading the rules, Mr. Carver invited committee members to ask questions, and he said that he could provide, if wished, a discussion of the changes between the rules used in 2011 and those used in 2005.

Representative Maestas Barnes asked about the committee's subpoena power and how Rule 3(f), authorizing special counsel to request a subpoena, would work absent subpoena power for the committee. Mr. Carver answered that the 2011 subcommittee had investigated this question thoroughly and determined that only the full House could issue a subpoena, which is why language from the 2005 rules concerning issuance of a subpoena utilizing the Legislative Finance Committee's subpoena power was removed from the rules in 2011. He noted that Rule 3(f) only authorized special counsel to request a subpoena through the committee. Co-Chair Chasey noted that the memorandum suggesting changes to the impeachment process that was written after the 2011 investigation had recommended that the Legislature change the law so that the Legislature not need to be in session for it to issue a subpoena, but no change was made. Upon further concerns being raised about how the issuance of a subpoena might happen, especially as the Legislature is not in session, Mr. Carver noted that the Taxation and Revenue Department and the State Auditor turned over their investigatory documents in 2011 without a subpoena and that only the Office of the Attorney General (OAG) required a subpoena — and that after that subpoena was issued, the OAG filed a Motion for a Protective Order raising various privileges. The issues surrounding that motion were unresolved at the time the 2011 matter was concluded.

Representative Dines asked why there was no provision in the rules for the taking and publishing of minutes, noting that comprehensive minutes were taken in 2011. Mr. Carver answered that in 2011, minutes were taken as a matter of course by LCS staff without a requirement under the rules, and minutes would be taken for the current proceedings. Representative Dines then asked about the publication of agendas for the HSIC meetings. Mr. Carver noted that meeting dates and locations for the HSIC would be posted as far in advance as possible and that notices of the meetings would be published in the LegisLetter. He also noted that any items that might be placed on an agenda would necessarily be of broad scope, such as, "discussion of matters relating to the investigation". Representative Dines noted that in 2011, the rules were discussed by number; he added that it might help to inform the public what would be discussed at each meeting.

Representative Dines then asked why the standard of proof was changed from "clear evidence" in 2005 to "credible evidence" in 2011, and he inquired about whether a definition was ever provided of "clear evidence" or "credible evidence". Mr. Carver directed the attention of the members of the committee to page 2 of the minutes of the third meeting of the 2011 committee and to page 2 of the minutes of the fifth meeting of the 2011 committee, and he read the accounts given of the discussion of the standard of proof. He noted that, in 2011, some members thought that the use of the term "credible" provided a firmer foundation for the subcommittee's work and that there was concern that the standard used by the subcommittee should be distinct from the standards used in civil or criminal cases. Mr. Burciaga added that, in 2005, there was a good bit of discussion about existing standards of proof, and the 2005 subcommittee was looking for a standard higher than "more likely than not" but different than "clear and convincing evidence" or "beyond a reasonable doubt".

Representative Steinborn noted the importance of webcasting the proceedings and asked whether the rules that the HSIC adopts will be posted online. Mr. Burciaga noted that the rules and all other materials will be made available online on the interim committee's page of the Legislature's web site and that the morning's materials already have been posted. Co-Chair Chasey noted that the minutes from each meeting will also be posted once the committee has approved the drafts.

**Motion:** Representative Maestas Barnes made a motion, seconded by Representative Martinez, that the co-chairs of the committee be authorized to select and retain special counsel and that the special counsel be authorized to begin work under the direction of the co-chairs and be asked to make a progress report to the committee at its next meeting. The motion was approved with no objections. In discussion of the motion, Representative Dines noted that, under the Open Meetings Act, Section 10-15-2(B) NMSA 1978, there is an exception to how the act applies to the Legislature for quasi-judicial or investigatory proceedings and that, while the HSIC likely falls under that exception, the committee should be commended for making its proceedings transparent to the public. He also asked the committee to consider making agendas for future meetings.

Co-Chair Cook noted that under Subsection C of that same section of the Open Meetings Act, the meetings of the HSIC might not even qualify as a meeting, but that it was important for the meetings to be open and transparent.

Co-Chair Cook asked that members of the HSIC inform one of the co-chairs if they had any suggestions for possible special counsel.

Co-Chair Cook then asked the committee to consider a date for the committee's next meeting. Ms. Chavez-Romero detailed the dates members had indicated to her that might work. The committee selected October 27, 2015 at 10:00 a.m. in Room 307 of the State Capitol for its next meeting.

Representative Rehm mentioned that it might be useful to the committee for the LCS to make a chart of each of the charges against the Secretary of State and the evidence used to support each charge. Co-Chair Chasey noted that this would be a task for special counsel. Representative Rehm asked that campaign laws be included in the committee members' notebooks. He noted that he had learned that there were no rules published yet for the conduct of elections and that it appears possible that it may not be a criminal violation for someone to borrow money from the account of one's campaign. He requested that the LCS research the matter and open a file to amend the law if changes are necessary. Representative Rehm later requested research concerning how amounts borrowed from a campaign account would be reported on someone's campaign finance report.

Representative Steinborn asked what the committee might expect at its next meeting. Mr. Burciaga stated that, first, the co-chairs would have to decide who they want to hire as special

counsel. Next, the special counsel would consult with the co-chairs and the LCS concerning the information that was available at present, what information might be needed and what the next steps would be for the investigation. Mr. Burciaga added that questions surrounding the publication of an agenda would also be addressed.

Representative Martinez noted that it was a sad occasion, but he could not think of a better group with whom to undertake this task.

Representative Salazar noted that on page 3 of the report from the 2005 investigation there was a projected schedule for the completion of the work, and he wondered what is the projected schedule for this investigation. Mr. Carver noted that the committee would be able to have a better sense of the timetable for the committee's work at its next meeting, after the special counsel is able to review all of the information and determine what the scope of the investigation might entail.

Co-Chair Cook expressed his gratitude to the staff and to the members serving on the committee.

The committee adjourned at 10:34 a.m.